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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

KAYLEE CONLIN, an individual,

Plaintiff,

vs.

RU CLIFF, LLC, a limited liability company;
RIZE HOMESOURCE, LLC, a limited
liability company; JON NEVIASER, an
individual; LAW OFFICE OF KIRK A.
CULLIMORE, L.L.C., a limited liability
company; KIRK A. CULLIMORE, an
individual,

Defendants.

**PLAINTIFF'S MOTION TO QUASH
DEFENDANTS' SUBPOENA TO
PRODUCE DOCUMENTS,
INFORMATION, OR OBJECTS**

Civil Action No. 2:17-cv-01213

Judge Tena Campbell

Pursuant to Federal Rule of Civil Procedure 45(d), Plaintiff, by and through her undersigned counsel, Kaylee Conlin hereby submits Plaintiff's Motion to Quash Defendants' Subpoena to Produce Documents, Information, or Objects (the "**Motion to Quash**").

RELIEF REQUESTED AND GROUNDS THEREFORE

Pursuant to rule 45(d)(3)(A)(iii) of the Federal Rules of Civil Procedure, Plaintiff files this Motion to Quash a Subpoena to Produce Documents, Information, or Objects (the

“**Subpoena**”) issued by counsel for RU Cliff, LLC, Rize Homesource, LLC, and Jon Neviaser (collectively the “**Rize Defendants**”). The Subpoena seeks the production of Plaintiff’s protected health information for which the Rize Defendants have not sought a qualified protective order pursuant to 45 C.F.R. § 164.512, and for which the Court has not ordered production. Thus, Plaintiff respectfully requests that the Court quash the Subpoena based on the Rize Defendants’ failure to seek a qualified protective order before seeking disclosure of protected material.

STATEMENT OF RELEVANT MATERIAL FACTS

On June 7, 2018, counsel for the Rize Defendants served Plaintiff’s counsel with a Notice of Intent to Obtain Protected Health Information by Issue of Subpoena Duces Tecum. *See* Declaration of Lauren DeVoe (“**DeVoe Dec.**”), attached hereto as Exhibit 1, ¶ 4. *See also* Notice of Intent to Obtain Protected Health Information by Issue of Subpoena Duces Tecum, attached hereto as Exhibit 2. Plaintiff’s counsel emailed counsel for the Rize Defendants on June 11, 2018, and requested that counsel for the Rize Defendants seek a protective order for the benefit of Plaintiff in protecting her health information and the Rize Defendants in obtaining compliance with the subpoena. DeVoe Dec., ¶ 5. On June 12, 2018, counsel for the Rize Defendants responded that they did not agree it was their burden to seek a protective order. DeVoe Dec., ¶ 6.

ARGUMENT

The regulations promulgated by the United States Department of Health and Human Services provide specific procedures for obtaining protected health information via a subpoena duces tecum. The Rize Defendants have not, to this point, followed those procedures, necessitating Plaintiff’s Motion to Quash.

Specifically, 45 C.F.R. § 164.512(e) details three ways in which a litigant can obtain another's protected health information. First, the party—in this case, the Rize Defendants—can obtain a court order commanding production of protected health information. 45 C.F.R. § 164.512(e)(1)(i). No such court order has been requested or issued in this matter.

Second, a party can obtain another's protected health information by serving a subpoena duces tecum, but only if either one of two conditions is met. 45 C.F.R. § 164.512(e)(1)(ii). Under the first condition, the party seeking the protected health information can provide the covered entity “satisfactory assurance ... that reasonable efforts have been made by such party” to notify the “the individual who is the subject of the protected health information that has been requested” and the time to raise an objection to the subpoena has expired and any objection has been resolved. 45 C.F.R. §§ 164.512(e)(1)(ii)(A), -(e)(1)(iii). The covered entity may also make “reasonable efforts to provide notice to the individual sufficient to meet the[se] requirements” and satisfy this condition before complying with a subpoena duces tecum, but it need not. 45 C.F.R. § 164.512(e)(1)(vi). As the time to file an objection has not expired, and as Plaintiff has now objected in this Motion to Quash, the Subpoena may not be complied with pursuant to this condition.

Under the second condition, the party seeking protected health information can provide the covered entity “satisfactory assurance” that “reasonable efforts have been made by such a party to secure a qualified protective order” 45 C.F.R. §§ 164.512(e)(1)(ii)(B), -(e)(1)(iv), -(e)(1)(v). As with the first condition, the covered entity can assume this burden and seek a qualified protective order, though it is not required to do so. 45 C.F.R. § 164.512(e)(1)(vi). However, the Rize Defendants have expressly declined to seek a qualified protective order.

WHEREFORE, Plaintiff respectfully requests that the Court grant her Motion to Quash and enter the proposed order, attached hereto as Exhibit 5, requiring the Rize Defendants to seek a qualified protective order in accordance with 45 C.F.R. § 164.512(e) prior to issuing a subpoena duces tecum for Plaintiff's protected health information.

DATED this 15th day of June, 2018.

MORRIS SPERRY

/s/ John D. Morris

John D. Morris

Lauren DeVoe

CERTIFICATE OF SERVICE

I hereby certify that on June 15, 2018, I caused a true and correct copy of the
PLAINTIFF'S MOTION TO QUASH DEFENDANTS' SUBPOENA TO PRODUCE
DOCUMENTS, INFORMATION, OR OBJECTS to be electronically filed and served via the
Court's electronic filing notification system upon the following:

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/s/ Lauren DeVoe
Lauren DeVoe

EXHIBIT 1

EXHIBIT 2

EXHIBIT 3

EXHIBIT 4

EXHIBIT 5